

Research Works, Inc. v New York City Dept. of Educ.
2014 NY Slip Op 31310(U)
May 20, 2014
Supreme Court, New York County
Docket Number: 652463/13
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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RESEARCH WORKS, INC.,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.
-----X

DECISION AND
ORDER

Index No.
652463/13

HON. ANIL C. SINGH, J.:

Defendant moves for an order dismissing the complaint pursuant to CPLR 3211, contending that it was not brought in the proper form. Plaintiff opposes the motion and cross-moves pursuant to CPLR 103(c), CPLR 3025(b) and CPLR 603 to amend and to convert this plenary action into two separate proceedings – specifically, an Article 78 proceeding, and a new plenary action for defamation. Defendant does not object to the proposed defamation action; however, it opposes the proposed Article 78 proceeding, contending that the proposed petition lacks sufficient specificity to state a cause of action for Article 78 review.

Plaintiff Research Works, Inc., commenced the instant plenary action on July 15, 2013, by filing a summons and complaint. The complaint alleges the following facts.

Plaintiff Research Works, Inc., is a not-for-profit corporation that provides educational evaluation services. Defendant New York City Department of Education (“DOE”) entered into a contract with plaintiff for various educational services beginning July 1, 2010, and ending June 30, 2013. By letter dated November 8, 2012, the DOE withdrew the purchase order, terminating plaintiff’s services.

Plaintiff availed itself of the opportunity for an administrative appeal, to a Dispute Resolution Officer (“DRO”), of the termination determination. The DRO issued a decision in a letter to plaintiff’s counsel dated May 30, 2013. The DRO’s decision denied all of plaintiff’s claims.

Plaintiff alleges that the termination letter, as a public document, has damaged its reputation; that the termination letter requested (allegedly improperly) that plaintiff furnish certain documentation, which it has declined to provide; and that there is payment outstanding on the terminated purchase order.

The complaint asserts causes of action for: 1) breach of contract; 2) quantum meruit; 3) unjust enrichment; 4) defamation; and 5) reckless damage to plaintiff’s reputation.

Discussion

Defendant points out that the parties’ written agreement contains a dispute

resolution provision. Based on that contractual provision, defendant asserts that plaintiff was required to commence an Article 78 proceeding, not a plenary action.

The provision – paragraph 25(E) of the agreement – states in part as follows:

E. If the Contractor protests the determination of the DRO ..., the Contractor may commence a lawsuit in Supreme Court, New York County under Article 78 of the New York Civil Practice Law and Rules.

(Affirmation in Support of Motion to Dismiss Action, exhibit B, pp. 23-24).

Defendant contends that the instant action is contractually barred based on paragraph 25(E).

CPLR 103(c) states:

Improper form. If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interest of justice, it may convert a motion into a special proceeding, or vice-versa, upon such terms as may be just, including the payment of fees and costs.

Plaintiff exhibits a copy of the proposed Article 78 petition.

Defendant's arguments in opposition to conversion of the plenary action to an Article 78 proceeding go to the merits of the matter and are not germane at this point. Upon the commencement of plaintiff's Article proceeding, the DOE can either file an answer or move to dismiss the Article 78 petition.

Accordingly, it is

ORDERED that the motion to dismiss is denied; and it is further

ORDERED that the branch of plaintiff's cross-motion for leave to amend the complaint is granted, and the amended complaint in the proposed form annexed to the cross-moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

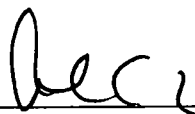
ORDERED that the branch of plaintiff's cross-motion to convert the first, second, and third causes of action to an Article 78 proceeding is granted, and the petition in the proposed form annexed to the cross-moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the defendant shall answer the amended complaint and petition or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 320, 80 Centre Street, on July 9, 2014, at 9:30 AM.

The foregoing constitutes the decision and order of the court.

Date: 5/20/14
New York, New York



Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE